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8 **BEFORE THE**
9 **CALIFORNIA BOARD OF ACCOUNTANCY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. AC-2005-36

12 MICHAEL ALAN FELDMAN
13 24758 Via Del Llano
14 Calabasas, CA 91302

**DEFAULT DECISION
AND ORDER**

14 Certified Public Accountant Certificate
15 No. CPA 34597

[Gov. Code, §11520]

16 Respondent.

17 FINDINGS OF FACT

18 1. On or about September 29, 2005, Complainant Carol Sigmann, in
19 her official capacity as the Executive Officer of the Board of Accountancy, filed
20 Accusation No. AC-2005-36 against Michael Alan Feldman (Respondent) before the
21 Board of Accountancy (Board).

22 2. On or about May 7, 1982, the Board issued Certified Public
23 Accountant Certificate No. CPA 34597 to Respondent. The Certified Public Accountant
24 Certificate expired on April 1, 2002, and has not been renewed.

25 3. On or about October 5, 2005, Rebeca Garcia, an employee of the
26 Department of Justice, served by Certified and First Class Mail a copy of the Accusation
27 No. AC-2005-36, Statement to Respondent, Notice of Defense, Request for Discovery,
28 and Government Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address

1 of record with the Board, which was and is 24758 Via Del Llano, Calabasas, CA 91302.

2 A copy of the Accusation is as exhibit A, and is incorporated herein by reference.

3 4. Service of the Accusation was effective as a matter of law under
4 the provisions of Government Code section 11505, subdivision (c).

5 5. On or about October 7, 2005, the aforementioned documents were
6 received at the address of record. A copy of the Domestic Return Receipt is incorporated
7 herein by reference.

8 6. Government Code section 11506 states, in pertinent part:

9 “(c) The respondent shall be entitled to a hearing on the merits if the
10 respondent files a notice of defense, and the notice shall be deemed a specific denial of all
11 parts of the accusation not expressly admitted. Failure to file a notice of defense shall
12 constitute a waiver of respondent's right to a hearing, but the agency in its discretion may
13 nevertheless grant a hearing.”

14 7. Respondent failed to file a Notice of Defense within 15 days after
15 service upon him of the Accusation, and therefore waived his right to a hearing on the
16 merits of Accusation No. AC-2005-36.

17 8. California Government Code section 11520 states, in pertinent
18 part:

19 “(a) If the respondent either fails to file a notice of defense or to appear at
20 the hearing, the agency may take action based upon the respondent's express
21 admissions or upon other evidence and affidavits may be used as evidence without
22 any notice to respondent.”

23 9. Pursuant to its authority under Government Code section 11520,
24 the Board finds Respondent is in default. The Board will take action without further
25 hearing and, based on Respondent's express admissions by way of default and the
26 evidence before it, contained in exhibit A finds that the allegations in Accusation No.
27 AC-2005-36 are true.

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1 10. The total costs for investigation and enforcement are \$4,494.99 as
2 of January 9, 2006.

3 DETERMINATION OF ISSUES

4 1. Based on the foregoing findings of fact, Respondent Michael Alan
5 Feldman has subjected his Certified Public Accountant Certificate No. CPA 34597 to
6 discipline.

7 2. A copy of the Accusation is attached.

8 3. The agency has jurisdiction to adjudicate this case by default.

9 4. The Board is authorized to revoke Respondent's Certified Public
10 Accountant Certificate based upon the following violations alleged in the Accusation:

11 a. Business and Professions Code sections 5100, subdivision (a), and
12 490 - conviction of crimes substantially related to the qualifications, functions, or duties
13 of a Certified Public Accountant.

14 b. Business and Professions Code section 5100, subdivision (k) -
15 diversion of assets or property constituting fraud.

16 c. Business and Professions Code section 5100, subdivision (g) -
17 diversion of assets to personal account, constituting self-dealing and lack of integrity.

18 d. Business and Professions Code section 5100, subdivision (c) -
19 gross negligence in the practice of accountancy.

20 e. Business and Professions Code section 5100, subdivision (i) -
21 failure to file tax Form 1099.

22 f. Business and Professions Code section 5100, subdivision (j) -
23 preparation and dissemination of false, fraudulent and misleading tax returns.

24 ORDER


25 IT IS SO ORDERED that Certified Public Accountant Certificate No.
26 CPA 34597, heretofore issued to Respondent Michael Alan Feldman, is revoked.

27 Pursuant to Government Code section 11520, subdivision (c), Respondent
28 may serve a written motion requesting that the Decision be vacated and stating the

1 grounds relied on within seven (7) days after service of the Decision on Respondent. The
2 agency in its discretion may vacate the Decision and grant a hearing on a showing of good
3 cause, as defined in the statute.

4 This Decision shall become effective on April 21, 2006.

5
6 It is so ORDERED March 22, 2006

7
8 
9 CALIFORNIA BOARD OF ACCOUNTANCY
10 Dept. of Consumer Affairs, State of California

11
12 60122406.wpd
13 DOJ docket number:LA2005500967

14 Attachment:

15 Exhibit A: Accusation No.AC-2005-36
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Exhibit A

Accusation No. AC-2005-36

1 BILL LOCKYER, Attorney General
of the State of California
2 SHAWN P. COOK, State Bar No. 117581
Deputy Attorney General
3 California Department of Justice
300 So. Spring Street, Suite 1702
4 Los Angeles, CA 90013
Telephone: (213) 897-9954
5 Facsimile: (213) 897-2804
6 Attorneys for Complainant

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8 **BEFORE THE**
9 **CALIFORNIA BOARD OF ACCOUNTANCY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. AC-2005-36

12 Michael Alan Feldman
24758 Via Del Llano
13 Calabasas, CA 91302

A C C U S A T I O N

14 Certified Public Accountant Certificate No. 34597

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

- 19 1. Carol Sigmann (Complainant) brings this Accusation solely in her official
20 capacity as the Executive Officer of the California Board of Accountancy, Department of
21 Consumer Affairs (Board).
- 22 2. On or about May 7, 1982, the Board issued Certified Public Accountant
23 Certificate No. 76419 to Michael Alan Feldman (Respondent). The Certified Public Accountant
24 Certificate expired on April 1, 2002, and is currently in a delinquent status.

25 **JURISDICTION**

- 26 3. This Accusation is brought before the Board, under the authority of the
27 following laws. All section references are to the Business and Professions Code unless otherwise
28 indicated.

1 4. Section 5100 states, in pertinent part:

2 "After notice and hearing the board may revoke, suspend, or refuse to renew any
3 permit or certificate granted under Article 4 (commencing with Section 5070) and Article 5
4 (commencing with Section 5080), or may censure the holder of that permit or certificate for
5 unprofessional conduct that includes, but is not limited to, one or any combination of the
6 following causes:

7 "(a) Conviction of any crime substantially related to the qualifications, functions
8 and duties of a certified public accountant or a public accountant.

9

10 "(c) Dishonesty, fraud, gross negligence, or repeated negligent acts committed in
11 the same or different engagements, for the same or different clients, or any combination of
12 engagements or clients, each resulting in a violation of applicable professional standards that
13 indicate a lack of competency in the practice of public accountancy or in the performance of the
14 bookkeeping operations described in Section 5052.

15

16 "(g) Willful violation of this chapter or any rule or regulation promulgated by the
17 board under the authority granted under this chapter.

18

19 "(i) Fiscal dishonesty or breach of fiduciary responsibility of any kind.

20 "(j) Knowing preparation, publication, or dissemination of false, fraudulent, or
21 materially misleading financial statements, reports, or information.

22 "(k) Embezzlement, theft, misappropriation of funds or property, or obtaining
23 money, property, or other valuable consideration by fraudulent means or false pretenses."

24 5. Section 5106 states:

25 "A plea or verdict of guilty or a conviction following a plea of nolo contendere is
26 deemed to be a conviction within the meaning of this article. The record of the conviction shall
27 be conclusive evidence thereof. The board may order the certificate or permit suspended or
28 revoked, or may decline to issue a certificate or permit, when the time for appeal has elapsed, or

1 the judgment of conviction has been affirmed on appeal or when an order granting probation is
2 made, suspending the imposition of sentence, irrespective of a subsequent order under the
3 provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his plea of
4 guilty and to enter a plea of not guilty, or setting aside the verdict of guilty or dismissing the
5 accusation, information or indictment."

6 6. Section 490 states:

7 "A board may suspend or revoke a license on the ground that the licensee has been
8 convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties
9 of the business or profession for which the license was issued. A conviction within the meaning
10 of this section means a plea or verdict of guilty or a conviction following a plea of nolo
11 contendere. Any action which a board is permitted to take following the establishment of a
12 conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has
13 been affirmed on appeal, or when an order granting probation is made suspending the imposition
14 of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the
15 Penal Code."

16 7. Board Rule 65 (Cal. Code Regs., tit.16, § 65) of Rules of Professional
17 Conduct states that "A licensee shall be independent in the performance of services in accordance
18 with professional standards." The AICPA *Code of Professional Conduct* includes Section I-
19 Principles and Section II-Rules. Both the Principles (Articles III and VI) and the Rules (Rule
20 102, Rule 501) are relevant to the allegations herein. Rule 102 (Integrity and Objectivity),
21 provides that "In the performance of any professional service, a member shall maintain
22 objectivity and integrity, shall be free of conflicts of interest, and shall not knowingly
23 misrepresent facts or subordinate his or her judgment to others." Rule 501 (Acts discreditable),
24 provides that "A member shall not commit an act discreditable to the profession."

25 8. Section 5070.7 states:

26 "(a) A permit that is not renewed within five years following its expiration may
27 not be renewed, restored, or reinstated thereafter, and the certificate of the holder of the permit
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1 shall be canceled immediately upon expiration of the five-year period, except as provided in
2 subdivision (e).

3 "(b) A partnership or corporation whose certificate has been canceled by operation
4 of this section may obtain a new certificate and permit only if it again meets the requirements set
5 forth in this chapter relating to registration and pays the registration fee and initial permit fee.

6 "(c) A certified public accountant whose certificate is canceled by operation of
7 this section may apply for and obtain a new certificate and permit if the applicant:

8 "(1) Is not subject to denial of a certificate and permit under Section 480.

9 "(2) Pays all of the fees that would be required of him or her if he or she were then
10 applying for the certificate and permit for the first time.

11 "(3) Takes and passes the examination which would be required of him or her if
12 he or she were then applying for the certificate for the first time. The examination may be
13 waived in any case in which the applicant establishes to the satisfaction of the board that, with
14 due regard for the public interest, he or she is qualified to engage in practice as a certified public
15 accountant.

16 "(d) The board may, by appropriate regulation, provide for the waiver or refund of
17 all or any part of the application fee in those cases in which a certificate is issued without an
18 examination under this section.

19 "(e) Revoked permits may not be renewed, but may be reinstated by the board,
20 without regard to the length of time that has elapsed since the permit was revoked, and with
21 conditions and restrictions as the board shall determine."

22 9. Section 118, subdivision (b), provides that the suspension / expiration /
23 surrender / cancellation of a license shall not deprive the Board of jurisdiction to proceed with a
24 disciplinary action during the period within which the license may be renewed, restored, reissued
25 or reinstated.

26 10. Section 5109 provides that the expiration, cancellation, forfeiture, or
27 suspension of a license, practice, privilege, or other authority to practice public accountancy by
28 operation of law or by order or decision of the board or a court of law, or the voluntary surrender

1 of a license by a licensee shall not deprive the board of jurisdiction to commence or proceed with
2 any investigation of or action or disciplinary proceeding against the licensee, or to render a
3 decision suspending or revoking the license.

4 11. Section 5107, subdivision (a), states:

5 "The executive officer of the board may request the administrative law judge, as
6 part of the proposed decision in a disciplinary proceeding, to direct any holder of a permit or
7 certificate found to have committed a violation or violations of this chapter to pay to the board all
8 reasonable costs of investigation and prosecution of the case, including, but not limited to,
9 attorneys' fees. The board shall not recover costs incurred at the administrative hearing."

10 FIRST CAUSE FOR DISCIPLINE

11 (Substantially Related Crime)

12 12. Respondent is subject to disciplinary action under Section 5100(a),
13 and 490, in that Respondent has been convicted of crimes substantially related to the
14 qualifications, functions, or duties of a Certified Public Accountant, as set forth below:

15 a. GRAND THEFT BY EMBEZZLEMENT - FELONY

16 On or about May 27, 2004, in a criminal action entitled *The People of the State of*
17 *California v. Michael Alan Feldman*, Ventura County Superior Court, Case No. 2003035915FA,
18 Respondent was convicted on his plea of guilty to violating Penal Code Section 487(a) (grand
19 theft by embezzlement), a felony, with excessive losses over \$100,000 [Pen. Code §
20 1203.045(a)] and excessive property damage over \$150,000 [Pen. Code § 12022.6(a)(2)].
21 Respondent was sentenced to one (1) year in jail, ordered to pay \$42,5978.19 to the victim,
22 Lindsey Studios, and placed on five (5) years probation.

23 The circumstances of the conviction are that between January 1, 1999 and August
24 1, 2001, while Respondent was a president, manager, and accountant for Lindsey Studios, Inc.,
25 he transferred, from Lindsey Studios, Inc.'s business checking account to his personal checking
26 account, approximately \$110,000 in 1999; \$160,000 in 2000; and \$112,000 in 2001. On or about
27 July 18, 2001, the principals of Lindsey Studios, Inc. confronted Respondent regarding their
28 found discrepancies in Respondent's prepared single page "Statement of Operations for 1-1-01 to

1 5-31-01" wherein the end of period cash in the business' checking account was represented to be
2 \$100,445, when in fact, Lindsey Studios, Inc.'s City National Bank account May 2001 bank
3 statement represented a balance of \$5,234.98, on or about May 31, 2001. The total amount
4 embezzled was \$381,670.50. The Respondent sporadically repaid \$248,310.000 to Lindsey
5 Studios, Inc. on or before July 18, 2001. On or about July 18, 2001, Respondent was terminated
6 from his management position at Lindsey Studios, Inc. and it was determined that at that time, he
7 had stolen and not repaid approximately \$133,360.50, which did not include his legitimate
8 monthly salary of \$6,000.00. Respondent failed to file tax returns for Lindsey Studios, Inc. for
9 1999 and 2000, and failed to issue a Form 1099 to himself from Lindsey Studios, Inc.

10 b. FILING FALSE TAX RETURN - FELONY

11 On or about October 28, 2004, in a criminal action entitled *The People of the State*
12 *of California v. Michael Alan Feldman*, Ventura County Superior Court, Case No.
13 2003035915FA, Respondent was convicted on his plea of guilty to violating Revenue and
14 Taxation Code Section 19705(a) (filing false tax return), a felony.

15 The circumstances of the conviction are that for the money stolen during 2000 and
16 2001 from Lindsey Studios, Inc., Respondent failed to issue himself Internal Revenue Service
17 Forms 1099 for miscellaneous income received, and Respondent willfully and unlawfully made
18 and executed under penalty of perjury a State of California, Franchise Tax Board's Resident
19 Income Tax return (Form 540) and attachments for tax year 2000, when he failed to report as
20 income the funds received from Lindsey Studios, Inc.

21 SECOND CAUSE FOR DISCIPLINE

22 (Misappropriation of Funds)

23 13. Respondent is subject to disciplinary action under Section 5100(k), in that
24 the diversion of Lindsey Studios, Inc.'s assets to the personal/business account of Respondent, as
25 set forth in para. 12a, constitutes embezzlement, and/or, misappropriation of funds or property.

26 THIRD CAUSE FOR DISCIPLINE

27 (Dishonesty, Fraud)

28 14. Respondent is subject to disciplinary action under Section 5100(c), in that

1 the diversion of Lindsey Studios, Inc.'s assets to the personal/business account of Respondent, as
2 set forth in the preceding paragraph 12a, constitutes dishonesty and/or fraud in the practice of
3 public accountancy.

4 FOURTH CAUSE FOR DISCIPLINE

5 (Self-Dealing and Lack of Integrity)

6 15. Respondent is subject to disciplinary action under Section 5100(g) for
7 violating Board Rule 65, in conjunction with AICPA Code of Professional Conduct, in that the
8 diversion of Lindsey Studios, Inc.'s assets to the personal/business account of Respondent, as set
9 forth in the preceding paragraph 12a, constitutes self-dealing and lack of integrity.

10 FIFTH CAUSE FOR DISCIPLINE

11 (Gross Negligence)

12 16. Respondent is subject to disciplinary action under Section 5100(c) for
13 violating professional standards and/or legal requirements, in that the diversion of Lindsey
14 Studios, Inc.'s assets to the personal/business account of Respondent, as set forth in the
15 preceding paragraph 12a, constitutes gross negligence in the practice of public accountancy
16 because, while acting as president, manager, and accountant, Respondent placed his own
17 financial interest above those of Lindsey Studios, Inc.'s and its principals, and ignored
18 professional requirements of integrity and lack of self-dealing.

19 SIXTH CAUSE FOR DISCIPLINE

20 (Breach of Fiduciary Duty)

21 17. Respondent is subject to disciplinary action under Section 5100(i), in that
22 each unauthorized diversion of Lindsey Studios, Inc.'s assets to the personal/business account of
23 Respondent and failure to file Form 1099s to himself from Lindsey Studios, Inc, as set forth in
24 the preceding paragraph 12a, constitutes a separate breach of Respondent's fiduciary
25 responsibility.

26 SEVENTH CAUSE FOR DISCIPLINE

27 (False Records)

28 18. Respondent is subject to disciplinary action under Section 5100(j), in that

1 on or about July 18, 2001, Respondent's preparation of a false financial statement or accounting,
2 by overstating income and excluding material unauthorized disbursements, as set forth in the
3 preceding paragraph 12a, constitutes the knowing preparation, publication or dissemination of
4 false, fraudulent, or materially misleading financial statements, reports, or information.

5 EIGHTH CAUSE FOR DISCIPLINE

6 (False Tax Return)

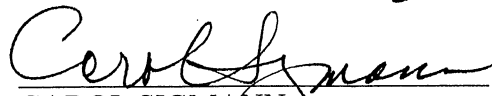
7 19. Respondent is subject to disciplinary action under Section 5100(j), in that
8 Respondent's preparation and dissemination of false, fraudulent and misleading tax returns, to
9 wit year 2000 Form 540, as set forth in the preceding paragraph 12b, by understating
10 miscellaneous income, concealing the material unauthorized disbursements, constitutes the
11 knowing preparation, publication or dissemination of false, fraudulent, or materially misleading
12 financial statements, reports, or information.

13 PRAYER

14 WHEREFORE, Complainant requests that a hearing be held on the matters herein
15 alleged, and that following the hearing, the California Board of Accountancy issue a decision:

- 16 1. Revoking, suspending, or otherwise imposing discipline upon Certified
17 Public Accountant Certificate No. 76419, issued to Michael Alan Feldman;
18 2. Ordering Michael Alan Feldman to pay the California Board of
19 Accountancy the reasonable costs of the investigation and enforcement of this case, pursuant to
20 Business and Professions Code Section 5107;
21 3. Taking such other and further action as deemed necessary and proper.

22 DATED: September 29, 2005

23 
24 CAROL SIGMANN
25 Executive Officer
26 California Board of Accountancy
27 Department of Consumer Affairs
28 State of California

Complainant